

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3815 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JINNATBEN W/O NOORMOHMED MIYANA

Versus

DISTRICT MAGISTRATE, SURENDRANAGAR & ORS.

Appearance:

MR ANIL S DAVE for Petitioner

Mr. Nigam R.Shukla, A.G.P.for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 22/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against detention order dated 24th April, 1996 passed by the District Magistrate, Surendranagar detaining the petitioner under the provisions of Gujarat Prevention of Anti-social Activities Act, 1985. The

detention order was executed on the same day and since then the petitioner is in detention lodged at Bhavnagar Jail, Bhavnagar.

2. The Special Civil Application was filed on 31st May, 1996 and on 3rd June, 1996 Rule returnable for 18th June, 1996 was issued. So far no reply has been filed on behalf of the respondents nor any affidavit in reply has been filed by the detaining authority.

3. The grounds enclosed with the detention order show that as many as 19 criminal cases were registered against the petitioner under Prohibition Act and the same are pending trial. The detaining authority has taken into consideration the allegations of these criminal cases as also the petitioner's continued anti-social activities and statements of the witnesses against petitioner's anti-social activities and the fact that the witnesses were frightened and afraid of her to disclose their identity and accordingly, the provisions of section 9(2) of the PASA Act have been invoked. The detaining authority has found that the petitioner was a bootlegger and was engaged in anti-social activities and out of these 19 cases, in 12 cases charge was not found to be proved against her.

4. Although the detention order has been challenged on several grounds, at the time of arguments, learned counsel for the petitioner kept his arguments confined to the ground that she had not been supplied with the copies of bail applications and the bail orders in 15 criminal cases which have been mentioned in para 11 of the petition. It has been submitted by the learned counsel that these documents were vital and relevant for the purpose of making an effective representation and her right under Article 22(5) of the Constitution has been violated.

5. This factual submission has not been controverted and the learned A.G.P. could not show from the record that copies of the bail applications and the bail orders in these cases have been supplied to the petitioner. Thus, on the ground of non-supply of vital documents, i.e. bail applications and bail orders, it is clear that the petitioner's right under Article 22(5) for making an effective representation has been violated and the impugned detention order dated 24th April, 1996 deserves to be set aside on this ground alone and her detention has to be declared to be illegal.

6. Accordingly, the Special Civil Application is allowed. The impugned order dated 24th April, 1996 passed by the District Magistrate, Surendranagar, is quashed and set aside. The petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set her at liberty forthwith if not required in any other case. Rule is accordingly made absolute.